

Senate Study Bill 1172

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON KREIMAN)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating the uniform child abduction prevention Act.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 1909SC 83
4 jm/nh/5

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1 1 Section 1. NEW SECTION. 598C.1 SHORT TITLE.
1 2 This chapter may be cited as the "Uniform Child Abduction
1 3 Prevention Act".
1 4 Sec. 2. NEW SECTION. 598C.2 DEFINITIONS.
1 5 As used in this chapter:
1 6 1. "Abduction" means the wrongful removal or wrongful
1 7 retention of a child.
1 8 2. "Child" means an unemancipated person under eighteen
1 9 years of age.
1 10 3. "Child custody determination" means a judgment, decree,
1 11 or other order of a court providing for the legal custody,
1 12 physical custody, or visitation with respect to a child. The
1 13 term includes a permanent, temporary, or modification order.
1 14 4. "Child custody proceeding" means a proceeding in which
1 15 legal custody, physical custody, or visitation with respect to
1 16 a child is at issue. "Child custody proceeding" includes a
1 17 proceeding for dissolution of marriage, neglect, abuse,
1 18 dependency, guardianship, paternity, termination of parental
1 19 rights, or protection from domestic abuse.
1 20 5. "Court" means an entity authorized under the law of a
1 21 state to establish, enforce, or modify a child custody
1 22 determination.
1 23 6. "Petition" includes a motion or its equivalent.
1 24 7. "Record" means information that is inscribed on a
1 25 tangible medium or that is stored in an electronic or other
1 26 medium and is retrievable in perceivable form.
1 27 8. "State" means a state of the United States, the
1 28 District of Columbia, Puerto Rico, the United States Virgin
1 29 Islands, or any territory or insular possession subject to the
1 30 jurisdiction of the United States. The term includes a
1 31 federally recognized Indian tribe or nation.
1 32 9. "Travel document" means records relating to a travel
1 33 itinerary, including travel tickets, passes, reservations for
1 34 transportation, or accommodations. "Travel document" does not
1 35 include a passport or visa.
2 1 10. "Wrongful removal" means the taking of a child that
2 2 breaches rights of custody or visitation given or recognized
2 3 under the law of this state.
2 4 11. "Wrongful retention" means the keeping or concealing
2 5 of a child that breaches rights of custody or visitation given
2 6 or recognized under the law of this state.
2 7 Sec. 3. NEW SECTION. 598C.3 COOPERATION AND
2 8 COMMUNICATION AMONG COURTS.
2 9 Sections 598B.110, 598B.111, and 598B.112 apply to
2 10 cooperation and communications among courts in proceedings
2 11 under this chapter.
2 12 Sec. 4. NEW SECTION. 598C.4 ACTIONS FOR ABDUCTION
2 13 PREVENTION MEASURES.
2 14 1. A court on its own motion may order abduction
2 15 prevention measures in a child custody proceeding if the court
2 16 finds that the evidence establishes a credible risk of
2 17 abduction of the child.
2 18 2. A party to a child custody determination or another
2 19 individual or entity having a right under the law of this

2 20 state or any other state to seek a child custody determination
2 21 for the child may file a petition seeking abduction prevention
2 22 measures to protect the child under this chapter.

2 23 3. A prosecutor or public authority designated under
2 24 section 598B.315 may seek a warrant to take physical custody
2 25 of a child under section 598C.9 or may take other appropriate
2 26 prevention measures.

2 27 Sec. 5. NEW SECTION. 598C.5 JURISDICTION.

2 28 1. A petition under this chapter may be filed only in a
2 29 court that has jurisdiction to make a child custody
2 30 determination with respect to the child at issue pursuant to
2 31 section 598B.201.

2 32 2. A court of this state has temporary emergency
2 33 jurisdiction pursuant to section 598B.204 if the court finds a
2 34 credible risk of abduction.

2 35 Sec. 6. NEW SECTION. 598C.6 CONTENTS OF PETITION.

3 1 A petition under this chapter shall be verified and include
3 2 a copy of any existing child custody determination, if
3 3 available. The petition shall specify the risk factors for
3 4 abduction, including the relevant factors described in section
3 5 598C.7. If reasonably ascertainable, the petition must
3 6 contain all of the following:

3 7 1. The name, date of birth, and gender of the child.
3 8 2. The address and current physical location of the child.
3 9 3. The identity, address, and current physical location of
3 10 the respondent.

3 11 4. A statement of whether a prior action to prevent
3 12 abduction or domestic abuse has been filed by a party or other
3 13 individual or entity having custody of the child, and the
3 14 date, location, and disposition of the action.

3 15 5. A statement of whether a party to the proceeding has
3 16 been arrested for a crime related to domestic abuse, stalking,
3 17 or child abuse or neglect, and the date, location, and
3 18 disposition of the case.

3 19 6. Information required to be submitted to the court for a
3 20 child custody determination under section 598B.308.

3 21 Sec. 7. NEW SECTION. 598C.7 FACTORS TO DETERMINE RISK OF
3 22 ABDUCTION.

3 23 1. In determining whether there is a credible risk of
3 24 abduction of a child, the court shall consider evidence that
3 25 the petitioner or respondent has done or may do any of the
3 26 following:

3 27 a. Abducted or attempted to abduct the child.

3 28 b. Threatened to abduct the child.

3 29 c. Engaged recently in activities that may indicate
3 30 evidence of a planned abduction, including the following:

3 31 (1) Abandoning employment.

3 32 (2) Selling a primary residence.

3 33 (3) Terminating a lease.

3 34 (4) Closing bank or other financial management accounts,
3 35 liquidating assets, hiding or destroying financial documents,
4 1 or conducting any unusual financial activities.

4 2 (5) Applying for a passport or visa or obtaining travel
4 3 documents for the respondent, a family member, or the child.

4 4 (6) Seeking to obtain the child's birth certificate or
4 5 school or medical records.

4 6 d. Engaged in domestic abuse, stalking, or child abuse or
4 7 neglect.

4 8 e. Refused to follow a child-custody determination.

4 9 f. Lacks strong familial, financial, emotional, or
4 10 cultural ties to this state or the United States.

4 11 g. Established strong familial, financial, emotional, or
4 12 cultural ties to another state or country.

4 13 h. Taken the child to a country that is determined to be
4 14 any of the following:

4 15 (1) A party that has not signed the Hague convention on
4 16 the civil aspects of international child abduction and does
4 17 not provide for the extradition of an abducting parent or for
4 18 the return of an abducted child.

4 19 (2) A party to the Hague convention on the civil aspects
4 20 of international child abduction but any of the following
4 21 apply:

4 22 (a) The Hague convention on the civil aspects of
4 23 international child abduction is not in force between the
4 24 United States and that country.

4 25 (b) The party is noncompliant with terms of the convention
4 26 according to the most recent compliance report issued by the
4 27 United States department of state.

4 28 (c) Legal mechanisms are lacking for immediately and
4 29 effectively enforcing a return order under the Hague
4 30 convention on the civil aspects of international child

4 31 abduction.

4 32 (3) A country in which there would be a risk that the
4 33 child's physical or emotional health or safety would be
4 34 endangered because of specific circumstances relating to the
4 35 child or because of human rights violations committed against
5 1 children.

5 2 (4) The laws or practices of the country do any of the
5 3 following:

5 4 (a) Enable the respondent, without due cause, to prevent
5 5 the petitioner from contacting the child.

5 6 (b) Restrict the petitioner from freely traveling to or
5 7 exiting from the country because of the petitioner's gender,
5 8 nationality, marital status, or religion.

5 9 (c) Restrict the child's ability legally to leave the
5 10 country after the child reaches the age of majority because of
5 11 a child's gender, nationality, or religion.

5 12 (5) A country that is included by the United States
5 13 department of state on a current list of state sponsors of
5 14 terrorism.

5 15 (6) A country that does not have an official United States
5 16 diplomatic presence in the country.

5 17 (7) A country that is engaged in active military action or
5 18 war, including a civil war, to which the child may be exposed.

5 19 i. Undergone a change in immigration or citizenship status
5 20 that would adversely affect the respondent's ability to remain
5 21 in the United States legally.

5 22 j. Had an application for United States citizenship
5 23 denied.

5 24 k. Forged or presented misleading or false evidence on
5 25 government forms or supporting documents to obtain or attempt
5 26 to obtain a passport, a visa, travel documents, a social
5 27 security card, a driver's license, or other government-issued
5 28 identification card or has made a misrepresentation to the
5 29 United States government.

5 30 l. Used multiple names to attempt to mislead or defraud.

5 31 m. Engaged in any other conduct the court considers
5 32 relevant to the risk of abduction.

5 33 2. In the hearing on a petition under this chapter, the
5 34 court shall consider any evidence that the respondent believed
5 35 in good faith that the respondent's conduct was necessary to
6 1 avoid imminent harm to the child or respondent and any other
6 2 evidence that may be relevant to whether the respondent may be
6 3 permitted to remove or retain the child.

6 4 Sec. 8. NEW SECTION. 598C.8 PROVISIONS AND MEASURES TO
6 5 PREVENT ABDUCTION.

6 6 1. If a petition is filed pursuant to section 598C.5, the
6 7 court may enter an order that shall include the following:

6 8 a. The basis for the court's exercise of jurisdiction.

6 9 b. The manner in which notice and opportunity to be heard
6 10 were given to the persons entitled to notice of the
6 11 proceeding.

6 12 c. A detailed description of each party's custody and
6 13 visitation rights and residential arrangements for the child.

6 14 d. A provision stating that a violation of the order may
6 15 subject the party in violation to civil and criminal
6 16 penalties.

6 17 e. Identification of the child's country of habitual
6 18 residence at the time of the issuance of the order.

6 19 2. If, at a hearing on a petition under this chapter or on
6 20 the court's own motion, the court after reviewing the evidence
6 21 finds a credible risk of abduction of the child, the court
6 22 shall enter an abduction prevention order. The order shall
6 23 include the provisions required by subsection 1 and measures
6 24 and conditions, including those described in subsections 3, 4,
6 25 and 5, that are reasonably calculated to prevent abduction of
6 26 the child, giving due consideration to the custody and
6 27 visitation rights of the parties. The court shall consider
6 28 the age of the child, the potential harm to the child from an
6 29 abduction, the legal and practical difficulties of returning
6 30 the child to the jurisdiction if abducted, and the reasons for
6 31 the potential abduction, including evidence of domestic abuse,
6 32 stalking, or child abuse or neglect.

6 33 3. An abduction prevention order may include one or more
6 34 of the following measures and conditions:

6 35 a. An imposition of travel restrictions that require that
7 1 a party traveling with the child outside a designated
7 2 geographical area provide the other party with the following:

7 3 (1) The travel itinerary of the child.

7 4 (2) A list of physical addresses and telephone numbers at
7 5 which the child can be reached at specified times.

7 6 (3) Copies of all travel documents.

7 7 b. A prohibition of the respondent directly or indirectly
7 8 doing the following:

7 9 (1) Removing the child from this state, the United States,
7 10 or another geographic area without permission of the court or
7 11 the petitioner's written consent.

7 12 (2) Removing or retaining the child in violation of a
7 13 child custody determination.

7 14 (3) Removing the child from school or a child care or
7 15 similar facility.

7 16 (4) Approaching the child at any location other than a
7 17 site designated for supervised visitation.

7 18 c. A requirement that a party register the order in
7 19 another state as a prerequisite to allowing the child to
7 20 travel to that state.

7 21 d. A direction that the petitioner place the child's name
7 22 in the United States department of state's child passport
7 23 issuance alert program.

7 24 e. A requirement that the respondent surrender to the
7 25 court or the petitioner's attorney any United States or
7 26 foreign passport issued in the child's name, including a
7 27 passport issued in the name of both the parent and the child.

7 28 f. A prohibition upon the respondent from applying on
7 29 behalf of the child for a new or replacement passport or visa.

7 30 g. A requirement that the respondent, as a prerequisite to
7 31 exercising custody or visitation, provide the following:

7 32 (1) An authenticated copy of the order detailing passport
7 33 and travel restrictions for the child to the United States
7 34 department of state office of children's issues and the
7 35 relevant foreign consulate or embassy.

8 1 (2) To the court, proof that the respondent has provided
8 2 the information in subparagraph (1) and an acknowledgment in a
8 3 record from the relevant foreign consulate or embassy that no
8 4 passport application has been made, or passport issued, on
8 5 behalf of the child.

8 6 (3) To the petitioner, proof of registration with the
8 7 United States embassy to the petitioner or proof of other
8 8 United States diplomatic presence in the destination country
8 9 and with the central authority for the Hague convention on the
8 10 civil aspects of international child abduction, if that
8 11 convention is in effect between the United States and the
8 12 destination country, unless one of the parties objects.

8 13 (4) A written waiver under the federal Privacy Act, 5
8 14 U.S.C. } 552a, with respect to any document, application, or
8 15 other information pertaining to the child authorizing its
8 16 disclosure to the court and the petitioner.

8 17 h. A requirement, upon the petitioner's request, that the
8 18 respondent obtain an order from the relevant foreign country
8 19 containing terms identical to the child custody determination
8 20 issued in the United States.

8 21 4. In an abduction prevention order, the court may impose
8 22 the following conditions on the exercise of custody or
8 23 visitation:

8 24 a. A limitation on visitation or require that visitation
8 25 with the child by the respondent be supervised until the court
8 26 finds that supervision is no longer necessary and order the
8 27 respondent to pay the costs of supervision.

8 28 b. A requirement that the respondent post a bond or
8 29 provide other security in an amount sufficient to serve as a
8 30 financial deterrent to abduction, the proceeds of which may be
8 31 used to pay for the reasonable expenses of recovery of the
8 32 child, including reasonable attorney fees and costs, if there
8 33 is an abduction.

8 34 c. A requirement that the respondent obtain education on
8 35 the potentially harmful effects to the child from abduction.

9 1 5. In order to prevent imminent abduction of a child, a
9 2 court do any of the following:

9 3 a. Issue a warrant to take physical custody of the child
9 4 under section 598C.9 or under the authority of any other
9 5 provision of the Code.

9 6 b. Direct the use of law enforcement to take any action
9 7 reasonably necessary to locate the child, obtain return of the
9 8 child, or enforce a child custody determination under this
9 9 chapter or under any other provision of the Code.

9 10 c. Grant any other relief allowed under the law of this
9 11 state not enumerated in this chapter.

9 12 6. The remedies provided in this chapter are cumulative
9 13 and do not affect the availability of other remedies to
9 14 prevent abduction.

9 15 Sec. 9. NEW SECTION. 598C.9 WARRANT TO TAKE PHYSICAL
9 16 CUSTODY OF CHILD.

9 17 1. If a petition under this chapter contains allegations,

9 18 and the court finds that there is a credible risk, that the
9 19 child is imminently likely to be wrongfully removed, the court
9 20 may issue an ex parte warrant to take physical custody of the
9 21 child.

9 22 2. The respondent on a petition under subsection 1 shall
9 23 be afforded an opportunity to be heard at the earliest
9 24 possible time after the ex parte warrant is executed, but not
9 25 later than the next judicial day unless a hearing on that date
9 26 is impossible. In that event, the court shall hold the
9 27 hearing on the first judicial day possible.

9 28 3. An ex parte warrant under subsection 1 to take physical
9 29 custody of a child shall do all of the following:

9 30 a. Recite the facts upon which a determination of a
9 31 credible risk of imminent wrongful removal of the child is
9 32 based.

9 33 b. Direct law enforcement officers to take physical
9 34 custody of the child immediately.

9 35 c. State the date and time for the hearing on the
10 1 petition.

10 2 d. Provide for the safe interim placement of the child
10 3 pending further order of the court.

10 4 4. If feasible, before issuing a warrant and before
10 5 determining the placement of the child after the warrant is
10 6 executed, the court may order a search of the relevant federal
10 7 and state databases to determine if either the petitioner or
10 8 respondent has a history of domestic violence, stalking, or
10 9 child abuse or neglect.

10 10 5. The petition and warrant must be served on the
10 11 respondent during or immediately after the child is taken into
10 12 physical custody.

10 13 6. A warrant to take physical custody of a child that
10 14 complies with this section, issued by this state or another
10 15 state, is enforceable throughout this state. If the court
10 16 finds that a less intrusive remedy will not be effective, it
10 17 may authorize law enforcement officers to enter private
10 18 property to take physical custody of the child. If required
10 19 by exigent circumstances, the court may authorize law
10 20 enforcement officers to make a forcible entry at any time of
10 21 day.

10 22 7. If the court finds, after a hearing, that a petitioner
10 23 sought an ex parte warrant under subsection 1 for the purpose
10 24 of harassment or in bad faith, the court may award the
10 25 respondent reasonable attorney fees, costs, and expenses.

10 26 8. This chapter does not affect the availability of relief
10 27 allowed under the law of this state other than this chapter.

10 28 Sec. 10. NEW SECTION. 598C.10 DURATION OF ABDUCTION
10 29 PREVENTION ORDER.

10 30 An abduction prevention order remains in effect until the
10 31 earliest of the following:

10 32 1. The time stated in the order.

10 33 2. The emancipation of the child.

10 34 3. The child's attaining eighteen years of age.

10 35 4. The time the order is modified, revoked, vacated, or
11 1 superseded by a court with jurisdiction under sections
11 2 598B.201 through 598B.203.

11 3 Sec. 11. NEW SECTION. 598C.11 UNIFORMITY OF APPLICATION
11 4 AND CONSTRUCTION.

11 5 In applying and construing this chapter, consideration must
11 6 be given to the need to promote uniformity of the law with
11 7 respect to its subject matter among states that enact the
11 8 uniform child abduction and prevention Act.

11 9 Sec. 12. NEW SECTION. 598C.12 RELATION TO ELECTRONIC
11 10 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

11 11 This chapter modifies, limits, and supersedes the federal
11 12 Electronic Signatures in Global and National Commerce Act, 15
11 13 U.S.C. } 7001, et seq., but does not modify, limit, or
11 14 supersede section 101(c) of the Act, 15 U.S.C. } 7001(c), or
11 15 authorize electronic delivery of any of the notices described
11 16 in section 103(b) of that Act, 15 U.S.C. } 7003(b).

11 17 EXPLANATION

11 18 This bill enacts the uniform child abduction prevention
11 19 Act.

11 20 The bill provides that a person may file a petition seeking
11 21 abduction prevention measures to prevent the abduction of a
11 22 child. A "child" means an unemancipated child under 18 years
11 23 of age. The bill also provides that the court on its own
11 24 motion may order abduction prevention measures in a child
11 25 custody proceeding if the court finds evidence establishing a
11 26 credible risk a child will be abducted.

11 27 Under the bill, a petition shall include a copy of any
11 28 existing child custody determination, if available, and must

11 29 specify the risk factors for abduction. The petition shall
11 30 also contain a statement whether prior action to prevent an
11 31 abduction or domestic abuse has been filed by a party to the
11 32 action, and whether any party to the action has been arrested
11 33 for a crime related to domestic abuse, stalking, or child
11 34 abuse or neglect.

11 35 Under the bill, in determining if there is a credible risk
12 1 of abduction of a child, the court shall consider whether a
12 2 party has previously abducted or attempted to abduct the child
12 3 or threatened to abduct the child, or has engaged in
12 4 activities that may indicate evidence of a planned abduction.
12 5 In addition, the court shall also consider whether either
12 6 party to the action has strong ties to the state of Iowa or
12 7 the United States, or whether a party to the action is likely
12 8 to take the child to a country that is not a party to the
12 9 Hague convention on the civil aspects of international child
12 10 abduction.

12 11 If the court finds a credible risk of abduction of the
12 12 child exists, the court shall enter an abduction prevention
12 13 order. The bill provides that the abduction prevention order
12 14 may impose travel restrictions on the parties, provide for a
12 15 visitation schedule, require a party to post a bond in an
12 16 amount sufficient to serve as a financial deterrent to
12 17 abduction, or require education classes.

12 18 If the court determines an abduction is imminent, the court
12 19 may issue a warrant including an ex parte warrant to take
12 20 physical custody of the child, direct law enforcement to
12 21 locate the child, or grant any other relief as provided by
12 22 law. If an ex parte warrant is issued pursuant to the bill,
12 23 the aggrieved party shall be afforded an opportunity to be
12 24 heard at the earliest possible time. If a child is taken into
12 25 custody pursuant to an ex parte warrant, the child taken into
12 26 custody shall be placed in a safe interim placement pending
12 27 further action by the court.

12 28 The bill provides that an abduction prevention order shall
12 29 be enforceable until the time stated in the order, the child
12 30 becomes emancipated, the child reaches 18 years of age, or the
12 31 abduction prevention order is modified.

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